IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10068 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HASMUKHLAL B DABHI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR BIPIN I MEHTA for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,
MR DHAVAL VAKIL FOR MR VIJAY H PATEL for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 08/10/2007

ORAL JUDGMENT

1. The petitioner under Article 226 of the Constitution of India has sought direction and/or

order to the respondents to accord the pay scale of Rs. 1400-2600 to the petitioner as per the recommendation of the Fourth Pay Commission and further sought direction to implement the resolution dated 25.11.91 passed by the Nagar Panchayat being Resolution No. 39.

2. The facts in brief deserve to be set out as under:

2.1 The then Commissioner, Ahmedabad Division sanctioned a post of Draftsman-cum-Clerk on the establishment of Dhandhuka Municipality vide order dated 15.02.60. The sanction was accorded pursuant to the repeated requests made by the Dhandhuka municipality to allow one post of Draftsman-cum-Clerk on the establishment. A copy of the said sanction is placed at Annexure 'A' to the petition.

2.2 The Commissioner had granted pay scale of Rs. 46-109 for the post of Draftsman-cum-Clerk. The said Dhandhuka municipality was converted into Dhandhuka Nagar Panchayat and the Nagar Panchayat passed an order on 17.09.76 appointing the petitioner to the post of Draftsman-cum-Clerk. A copy of the said order is produced at Annexure 'B' to the petition. The petitioner continued to work as Draftsman-cum-Clerk in the said scale. A few Panchayat employees who were aggrieved by their status moved a writ petition which came to be disposed of by the Court in their favour and the

State appeal was also disposed of confirming this Court's decision as it is reported in AIR 1984 SC 161. It was held that the Panchayat employees were required to be given status of government servants. The Dhandhuka Nagar Panchayat passed a resolution being Resolution No. 257 dated 27.08.82 revising the pay scales of the employees. The resolution noted that the pay scales were granted with effect from 01.06.82. In the said resolution of the Panchayat at Serial No. 9, the petitioner was granted the pay scale of Rs. 260-400 for the post of Draftsman-cum-Clerk. This resolution assumes importance as from that day onwards it can be said that the petitioner came to be alloted scale of Rs. 260-400 for the post of Draftsman-cum-Clerk. The said resolution is produced at Annexure 'C' to the petition.

2.3 The petitioner has enlisted at page 7 in the memo of the petition the proposed revision in his pay scale which ought to have been effected by the respondent. The State issued a resolution dated 27.10.89 wherein the post of Draftsman-cum-Clerk was not mentioned and no scale was stated so far as the post of Draftsman-cum-Clerk was concerned. However, as per the say of the petitioner the petitioner came to be accorded the scale of Rs. 950-1500. The petitioner made several representations but without any avail. Ultimately as the scale demanded i.e Rs. 1400-2600 had not been granted to the petitioner he has filed this petition.

3. Mr Mehta, learned advocate appearing for the petitioner at this stage submitted that from the record it can be said that at the relevant time the District Development Officer and the Panchayat infact supported the case of the petitioner for fixing his salary in the scale of Rs. 1400-2600. Mr Mehta has submitted that the pay scale for the post of Draftsman-cum-Clerk was never a subject matter of pay revision and the pay fixation right from the Sarla Pay Commission. However, the petitioner was accorded initially the pay scale of Rs. 950-1500 which was accepted by him and since then he is not given the benefit of revised pay scale as the post is treated to be that of a Clerk only.

4. The State as well as the District Development Officer have filed their respective affidavits resisting the claim of the petitioner. The affidavit in reply filed on behalf of respondent no.3 on 21.02.97 deserves to be taken into consideration in order to appreciate the entire controversy. It deserves to be noted that as per the government resolution dated 31.01.92 the scales were fixed as per the appendix mentioned thereunder. Now under that appendix at item no. 17 few posts are mentioned. They read as under:

Surveyor/Mechanic/Mistry/Draftsman/Mechanical Foreman

5. In the Sarla Pay Commission's recommendations

the pay scale for the aforesaid was shown to be Rs. 130-240 and the second scale is mentioned as Rs. 90-110. The scale as per Desai Pay Commission was required to be revised from Rs. 130-240 to Rs. 260-400 and for the second scale the revision was from Rs. 90-110 to 196-232. As per the ROP of 1987 the scale was Rs. 950-1500 to the persons holding certificates and Rs. 700-940 to others. Here the petitioner was considered for the scale of Rs. 950-1500 may be on account of his drawing salary in the scale of Rs. 260-400 though Mr Mehta has been candidly admitting before this Court that the petitioner does not possess any certificate whatsoever which is talked about in Column 17. This Court put a precise query to Mr. Mehta as to under which provision the petitioner came to be given the scale of Rs. 950-1500 and he has submitted that the scale of Rs. 950-1500 was given to the petitioner under Entry 17 of page 75 of the compilation.

6. Mr Mehta was also called upon to answer as to whether the scale of Rs. 950-1500 was given to the petitioner on the basis of some certificate which is discussed thereunder. To this Mr Mehta candidly stated that the petitioner did not possess any certificate as prescribed there under. Be it as it may. One can have some justification from having recourse to entry no. 6 which talks about the Sub-overseer wherein the persons working as Sub Overseer even if having no degree, diploma or certificate are accorded scale of Rs. 950-1500. The petitioner as

the say of the petitioner was working in the Construction department and therefore at the best there was some justification for giving him the salary in the scale of Rs. 950-1500. This Court at this stage would not like to dwell upon this aspect. Suffice it to say that the scale had been continued thereafter. The scale which is demanded is not the prescribed scale for this post.

7. It is emerging from the affidavit filed by the District Development Officer in the year 1997 that the scale that was Rs. 260-400 was given as the scale attached to the post of Clerk and thereafter all along the petitioner is for all purposes treated as Clerk only. The pay scale of Rs. 1400-2600 was never accorded to the post of Clerk and therefore the same pay scale could not have been given to the petitioner. The petitioner has not produced any recommendation either of Sarla Pay Commission or of Desai Pay Commission for justifying his claim attached to the post of Draftsman nor has he been in a position to produce any material indicating that the pay scale which is recommended by the Panchayat was having any support in the eye of law. The Panchayat was also not at liberty at the given point of time to prescribe scale according to their choice. Therefore, the petitioner's claim for the scale of Rs. 1400-2600 cannot be accepted and this petition deserves to be dismissed as having no merits.

8. Accordingly, this petition is dismissed. Rule

is discharged.

(S.R.BRAHMBHATT, J.)

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